**In the Court of Appeal of the State of California**
**Sixth Appellate District**

| | |
|---|---|
| The People of the State of California,<br><br>Plaintiff and Respondent,<br><br>vs.<br><br>Frank Stephenson,<br><br>Defendant and Appellant. | Court of Appeal No.<br>H045719<br><br>San Benito County No<br>CR 1502022 |

Appeal from the Superior Court of California,
San Benito County

The Honorable Steven R. Sanders, Judge

---

Appellant's Reply Brief

---

Paul R. Kraus, Attorney at Law
State Bar No. 241628
Paul R. Kraus, Attorney at Law, P.C.
6114 LaSalle Avenue, #153
Oakland, CA 94611
(510) 339-3075

Attorney for Appellant
Frank Stephenson

By appointment of the Court of Appeal

Table of Contents

TABLE OF AUTHORITIES. . . . . 3

ARGUMENT. . . . . 4

I. THE WEAPONS-POSSESSION AND SCHOOL-PROXIMITY CONDITIONS OF MANDATORY SUPERVISION ARE UNCONSTITUTIONALLY VAGUE BECAUSE THEY DO NOT SPECIFY ADEQUATELY WHAT ITEMS OR CONDUCT THEY PROHIBIT. . . . . 4

A. Introduction. . . . . 4

B. The Weapons-Possession Condition.. . . . . 6

C. The Adjacent-to-School-Campus Prohibition Condition.. . . . . 9

II. THE IMPOSITION OF THE COURT OPERATIONS FEE AND THE COURT FACILITIES FEE AS CONDITIONS OF MANDATORY SUPERVISION ARE AN UNAUTHORIZED SENTENCE. . . . . 9

III. THIS COURT SHOULD CORRECT A CLERICAL ERROR THE TRIAL COURT MADE WHEN IT CONVERTED APPELLANT'S THREE YEARS OF MANDATORY SUPERVISION TO DAYS: IT SHOULD HAVE RESERVED THE CONCLUDING 1,095 DAYS OF APPELLANT'S SENTENCE FOR MANDATORY SUPERVISION, NOT THE CONCLUDING 995 DAYS. . . . . 10

CONCLUSION. . . . . 10

CERTIFICATION OF COMPLIANCE. . . . . 11

PROOF OF SERVICE BY MAIL. . . . . 12

Table of Authorities

Cases

*In re R. P.* (2009) 176 Cal.App.4th 562. . . . . 7, 8

*People v. Barajas* (2011) 198 Cal.App.4th 748. . . . . 5, 6

*People v. Contreras* (2015) 237 Cal.App.4th 868.. . . . . 6, 8, 9

*People v. Rhinehart* (2018) 20 Cal.App.5th 1123.. . . . . 5, 6

Statutes

Gov. Code, §70373, subd. (a)(1). . . . . 10

Pen. Code, §1465.8. . . . . 10

Treatises and Other Provisions of Law

California Rules of Court, rule 8.360(b)(1). . . . . 11

**In the Court of Appeal of the State of California**
**Sixth Appellate District**

| | |
|---|---|
| The People of the State of California, | ) |
| Plaintiff and Respondent, | ) Court of Appeal No. H045719 |
| vs. | ) |
| Frank Stephenson, | ) San Benito Co. No. CR 1502022 |
| Defendant and Appellant. | ) |

Appeal from the Superior Court of California,
San Benito County

The Honorable Steven R. Sanders, Judge

---

APPELLANT'S REPLY BRIEF

---

ARGUMENT

I.

THE WEAPONS-POSSESSION AND SCHOOL-PROXIMITY CONDITIONS OF MANDATORY SUPERVISION ARE UNCONSTITUTIONALLY VAGUE BECAUSE THEY DO NOT SPECIFY ADEQUATELY WHAT ITEMS OR CONDUCT THEY PROHIBIT.

A. Introduction

In his opening brief, appellant argued that the weapons-possession

condition[1] and the adjacent-to-school-campus condition[2] of appellant's mandatory supervision are unconstitutionally vague and this court should strike or modify them. (AOB 9-18.) He argued that the weapons-possession condition is vague because it is too general. (AOB 16-17.) He argued that the adjacent-to-school-campus condition is vague because it does not describe adequately where he is prohibited from being. (AOB 17-18.)

In its brief, respondent argues that the weapons-possession condition is adequately specific because a reasonable, common sense interpretation of the condition is that all terms following "weapon" in the list of prohibited items are instances or examples of prohibited weapons. (RB 8-10.) As to the adjacent-to-school-campus condition, respondent argues that the court may modify the condition consistently with *People v. Rhinehart* (2018) 20 Cal.App.5th 1123 and *People v. Barajas* (2011) 198 Cal.App.4th 748 "to specify that appellant remain 50 feet away from

---

1 The weapons-possession condition provides in full, "Do not own, possess, have access to, or have under you control ANY weapons, firearms, stun guns, OC (pepper) spray/tear gas. Do not own, have access to, or have under your control any type of instrument or device which a reasonable person would believe to be capable of being used as a firearm or any ammunition which could be used in a firearm; any knife with a blade longer than two inches, except kitchen knives, which must be kept in your residence or knives related to your employment, which may be used and carried only in connection with your employment." (CT 117.)

2 The adjacent-to-school condition prohibits appellant from "be[ing] adjacent to any school campus during school hours unless [he is] enrolled or with prior permission of the school administrator or probation." (CT 118.)

school campuses unless enrolled or given permission by a school administrator." (RB 11.) Respondent apparently concedes that the condition as currently imposed is impermissibly vague, consistently with *Reinhardt* and *Barajas,* and argues, as appellant has argued in the alternative, that this court should modify the condition. (RB 10-11; see AOB 18.)

Respondent's argument as to the weapons-possession condition is incorrect. Respondent misinterprets the language of the condition. Furthermore, under respondent's interpretation of the condition here, *People v. Contreras* (2015) 237 Cal.App.4th 868 would have been decided differently.

For this and all other issues, if appellant does not address any argument of respondent in this brief, he relies on his opening brief.

B. The Weapons-Possession Condition

The weapons-possession condition is vague because it is too general and could apply to any of a virtually inexhaustible number of objects which could potentially be used as weapons. (AOB 16-17.)

Respondent argues that "weapons" in the list of prohibited items is the general category and that all of the other items in the remainder of the condition are instances of weapons. (RB 8.) Respondent continues that "[i]f appellant is allowed to have kitchen knives in his home for cooking or large knives on his person for work, he can possess a properly stored tool

or eat with a fork. (RB 8.) Interpreted reasonably and consistently with common sense, respondent argues, the condition is not vague. (RB 8.)

As appellant argued in his opening brief, in *In re R. P.* (2009) 176 Cal.App.4th 562 the court found that a condition prohibiting R. P. from possessing any dangerous or deadly weapon was adequately specific because it could reasonably be interpreted to prevent him from possessing "any item specifically designed as a weapon [and] . . . any item . . . [not specifically designed as a weapon] if he intends to use the item to inflict or threaten to inflict death or great bodily injury. (*Id.* at pp. 565, 570; see AOB 16.) This is precisely the qualification which is absent from the condition here and which renders it vague.

The condition here is not only a list of instances of "weapon." First, reading the first sentence alone, respondent's interpretation of the condition would be more accurate if the first sentence contained language such as "weapons, including without limitation . . .". It does not.

The condition lists three different categories of items in separate sentences. It starts off listing items which are weapons regardless of how they are possessed. Then, it moves on to items which look like weapons. Finally, it shifts and concludes with items which are weapons only if possessed in certain situations or used in a certain manner. Without qualifying language like "deadly or dangerous," this unacknowledged logical shift causes the condition to be vague. (*In re R. P., supra,* 176 Cal.App.4th at pp. 565, 570.)

Respondent argues that *In re R.P.* supports its position because:

> A reasonable person reading the condition would understand that they may not possess dangerous or deadly weapons and that their intent and use of an object will inform whether or not they are in violation of the condition.

(RB 10.) Respondent is incorrect. The full context of the condition set forth above makes respondent's conclusion is less, not more, clear. *In re R.P.* does not, as respondent argues, support its claim. (*In re R. P., supra,* 176 Cal.App.4th at pp. 565, 570.)

Nor does *Contreras*. In *Contreras*, the challenged probation condition ordered Contreras not to "have access to, use or possess any police scanner device or surveillance equipment on [his] person, vehicle, place of residence, or personal effects." (*Contreras, supra* ,237 Cal.App.4th at p. 876.) This court found this condition to be unconstitutionally vague because it did not describe the prohibited items with sufficient specificity and clarity. (*Id.* at p. 889.) It remanded the case to the trial court for the fashioning of a clearer condition. (*Ibid*.) Applying the rules of construction which respondent argues for in this case to *Contreras*, *Contreras* would have been decided differently.

This court should strike the weapons-possession condition and remand the case to the trial court for the formulation of an adequately clear and specific condition.

C. The Adjacent-to-School-Campus Prohibition Condition

Respondent argues that the court may modify the condition "to specify that appellant remain 50 feet away from school campuses unless enrolled or given permission by a school administrator." (RB 11.)

Appellant relies on his opening brief as to this issue. (See (AOB 17-18.) There, he argued in the alternative that this court should modify the condition or remand the case to the trial court for the trial court to modify it in consultation with counsel and probation. (AOB 17-18.)

II.

THE IMPOSITION OF THE COURT OPERATIONS FEE AND THE COURT FACILITIES FEE AS CONDITIONS OF MANDATORY SUPERVISION ARE AN UNAUTHORIZED SENTENCE.

Respondent concedes this issue and "has no objection fo this Court modifying the judgment to clarify that [the court operations fee and the court facilities fee] are not conditions of mandatory supervision but separate orders entered at judgment." (RB 12.)

Appellant relies on his opening brief as to this issue. (AOB 19-20.)

III.

THIS COURT SHOULD CORRECT A CLERICAL ERROR THE TRIAL COURT MADE WHEN IT CONVERTED APPELLANT'S THREE YEARS OF MANDATORY SUPERVISION TO DAYS: IT SHOULD HAVE RESERVED THE CONCLUDING 1,095 DAYS OF APPELLANT'S SENTENCE FOR MANDATORY SUPERVISION, NOT THE CONCLUDING 995 DAYS.

On July 19, 2018, the trial court corrected this error. (Augmented Clerk's Transcript at pp. 23-25.) Appellant withdrew this issue by letter to the court of August 13, 2018.

CONCLUSION

This court should strike the conditions of supervision that appellant not possess or have under his control "ANY weapons, firearms, stun guns or OC (pepper) spray/tear gas" and that he not "be adjacent to any school campus during school hours" because they are unconstitutionally vague.

This court should strike the conditions of supervision that appellant pay a court operations fee of $40 (Pen. Code, §1465.8) and a court facilities fee of $30 (Gov. Code, §70373, subd. (a)(1)) because they are

legally unauthorized.

Respectfully submitted,

APPELLANT FRANK STEPHENSON

By: _____

Paul R. Kraus,
Attorney at Law, P.C.
6114 LaSalle Avenue, #153
Oakland, CA 94611
(510) 339-3075
State Bar No. 241628

Attorney for Appellant
Frank Stephenson

CERTIFICATION OF COMPLIANCE

Counsel hereby certifies under penalty of perjury under California Rules of Court, rule 8.360(b)(1) that the word processing software word count function on Corel WordPerfect shows that this document 1,314 contains words, excluding tables and indices, which is within the authorized maximum of 25,500 words.

_____

Paul R. Kraus
Attorney at Law

Proof of service by mail: *People v. Stephenson,* No. H045719

State of California)
(ss.: Oakland

County of Alameda)

I, Paul R. Kraus, do hereby declare and state as follows:

1. I am an attorney at law licensed to practice before all courts of the State of California.

2. On November 21, 2018, I served the within Reply Brief on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, postage prepaid, in the United States Mail at Oakland, California, or by email where there is an email address listed, as follows:

Office of the Attorney General
450 Golden Gate Avenue, Room 11000
San Francisco, CA 94102
adieservice@doj.ca.gov

Jonathan Grossman, Esq., Esq.
Appellate Defenders, Inc.
555 W. Beech Street, Suite 300
San Diego, CA 92101
eservice-criminal@adi-sandiego.com

Mr. Frank Stephenson, Booking No. 80405
San Benito County Jail
P.O. Box 920
Hollister, CA 95023

The Honorable Steven R. Sanders
San Benito County Superior Court
450 Fourth Street
Hollister, CA 95023

Office of the District Attorney
San Benito County

419 Fourth Street
Hollister, CA 95023

3. I am “readily familiar” with the firm’s practice of collection and processing of correspondence for mailing. Under that practice, correspondence for mailing is deposited in the ordinary course of business in a repository of the United States Mail in Oakland, California, postage prepaid, on the same day it is collected and processed.

4. I am aware that on motion of a party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit stated in this declaration.

5. I declare under penalty of perjury that the foregoing is true and correct and I executed this proof of service in Oakland, California on November 21, 2018.

_____
Paul R. Kraus
State Bar No. 241628